

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 453 OF 2024

Manohar Sakharam Panchal

... **Applicant**

Versus

Smt. Vithabai Kashinath Gaikar

(Deceased) And Ors

... **Respondents**

Mr. Abhijeet Kulkarni *a/w Mr. Raghvendra Kulkarni for the Applicant.*

Mr. P. A. Sarwankar *for Respondent Nos. 1(a)(i), 1(a)(ii) and 1(d).*

CORAM : SANDEEP V. MARNE, J.

DATE : 8 OCTOBER 2024.

P.C. :

1) The challenge in the present Revision Application is to the Judgment and Decree dated 21 March 2004 passed by the Appellate Bench of the Small Causes Court allowing Appeal No. 127 of 2023 and setting aside the Judgment and Decree dated 15 April 2019 passed by the Trial Court in R.A.E. and R. Suit No. 835/1412 of 2000. Thus, the suit filed by the Revision Applicant/Plaintiff seeking eviction of the Defendants is ultimately dismissed on account of the impugned decree passed by the Appellate Bench.

2) It appears that Plaintiff instituted R.A.E. and R. Suit No. 835/1412 of 2000 for recovery of possession of the suit premises on various grounds such as bonafide requirement, nuisance and arrears of rent. The suit was initially dismissed by the Small Causes Court by Judgment and Decree dated 28 February 2013 rejecting the grounds of bonafide requirement unauthorised alterations, nuisance, waste and damage etc. The Trial Court further held that prior to filing of the suit, the land on which the suit premises are situated, is declared as Slum under the provisions of Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (**Slum Act**). The suit was therefore held to be not maintainable in absence of prior permission of the Competent Authority under Section 22 of the Slum Act. Plaintiff filed Appeal No. 72 of 2013 before the Appellate Bench of the Small Causes Court, which set aside the decree of the Trial Court and remanded the Suit for fresh decision by referring to the judgment of this Court in ***Abdul Basu Vs. Smt. Teresa Rozario and Ors.***¹ and by relying on Order dated 5 March 2014 passed by the Maharashtra Slum Tribunal setting aside of the Notification dated 30 June 1978.

3) After the Suit was remanded for fresh decision, the Trial Court proceeded to decree the Suit on 15 April 2019 by relying on Tribunal's Order dated 5 March 2014 and accepting the grounds of bonafide requirement, nuisance and arrears in payment of rent. When the tenant challenged the decree dated 15 April 2019 before the Appellate Bench, it referred to the judgment of Division Bench of this Court rendered in ***Satish Shahu Bane & Anr. Vs. Dattatraya***

1 (1986 (1) All India Rent Control Journal 154)

Tanaji Padam & Anr.² holding that subsequent decision of the Tribunal setting aside declaration of Slum Area did not validate the invalid suit instituted without complying with requirement under Section 22 of the Slum Act. Taking note of the ratio of the judgment of Division Bench in ***Satish Shahu Bane*** (supra) the Appellate Court has allowed the Appeal and has dismissed the suit as not maintainable vide decree dated 23 March 2024, which is subject matter of challenge in the present Revision Application.

4) I have heard Mr. Kulkarni, the learned counsel appearing for the Revision Applicant and Mr. Sarvankar, the learned counsel appearing for the Respondents/Defendants.

5) While dismissing the suit, the Appellate Court has relied upon judgment of this Court ***Satish Shahu Bane & Anr.*** in which Division Bench of this Court has held in paragraphs 10 and 11 as under:

10. The same principle cannot be made applicable to a Notification issued in exercise of powers conferred by a statute which is subsequently set aside and does not have an effect of nullifying the compliance contemplated under it, while it was in existence. In present case when the suit was filed, the statute contemplated prior permission of the competent authority and since it was the mandate of the statute, a suit filed without such a permission is bad in law. If a statute requires a particular thing to be done in a particular manner then it has to be done in the same manner and in no other way. This sound principle of law laid down in *Taylor v. Taylor*, reported in (1875) 1 Ch.D 426, necessarily prohibits the doing of the act in any other manner other than that has been prescribed. The principle behind the well accepted proposition followed by courts in India for several decades is that the statutory provision might as well would have been not enacted. It is followed in the case of *Nazir Ahmad v. King Emperor* reported in AIR 1936 PC 253.

² 2020 (5) Mh.L.J.245

Thus, when a declaration made under the statute declaring an area to be slum is AJN 11/12 18 WP-2926.01(J).doc set aside, at a subsequent point of time, it cannot automatically be held to be non-existent and if it was a condition precedent under Section 22 of the Act to institute a suit, it will not have an effect of wiping out the shortfall at that point of time when the suit was instituted without permission of the competent authority. While acting under the statute, which contemplates declaration of area as a slum and all the constrictions which find place in form of Section 22 as valid prerequisite for institution of suit, any other mode is forbidden.

11. When a law is enacted by a legislature, though without competency, it remains on Statute book till a court of competent jurisdiction declares it invalid and, once it does so, it declared nonest for all purposes, exception being made in favour of prospective overruling, where the declaration of invalidating is directed to take effect from a future date. However on a declaration of a slum, being set aside, we do not agree with the view taken in Smt. Teresa that once the declaration of a slum is set aside, the very effect of it is washed away and, consequently, there was no prohibition against filing of the suit without permission of the competent authority. On the contrary, we concur with the view of the learned Single Judge in case of Smt. Hasira that a suit instituted without complying with requirement of Section 22 is not maintainable and the decree therein becomes illegal in absence of such permission. A decree which has attained finality, AJN 12/12 18 WP-2926.01(J).doc cannot be reopened on a subsequent decision setting aside that declaration of area as slum."

In the present, case there is no dispute about the position that the Slum Notification was issued on 30 June 1978 and when the suit was filed on 16 August 2000, the land was under declaration as 'slum'. It is only in the year 2014 that the Slum Tribunal set aside the declaration by Order dated 5 March 2014. As per the law enunciated by Division Bench of this Court in **Satish Shahu Bane & Anr.** subsequent setting aside of the declaration by the Slum Tribunal does not validate the invalid suit instituted without seeking prior permission of Competent Authority under Section 22 of the Slum Act. In that view of the matter, no serious error can be traced in the Appellate Court's decree dismissing the Suit.

6) However, the folly committed by the Appellate Bench of the Small Causes Court is unnecessarily adjudicating the grounds of eviction while holding that the suit was not maintainable. If the suit itself is not maintainable, the merits of the contentions raised in the suit could not have been decided. Though the suit is held to be not maintainable, the same does not prevent Plaintiff from securing permission under Section 22 from the Competent Authority for institution of fresh suit. Therefore, if and when the Plaintiff secures permission of Competent Authority and institutes a fresh suit, he would be in position to raise all possible grounds for seeking eviction of the Defendants from the suit premises and findings recorded by the Small Causes Court and its Appellate Bench in various orders passed in R.A.E and R. Suit No. 835/1412 of 2000 shall come in the way of Plaintiff in prosecuting and Defendants in defending such suit. Defendants can also raise the objection of limitation in respect of grounds, which were raised R.A.E and R. Suit No. 835/1412 of 2000 and such objection would be decided on own merits.

7) With the above observations and leaving open all points raised by parties on merits, Civil Revision Application is **dismissed**.

[SANDEEP V. MARNE, J.]